

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEMEAD SCHOOL DISTRICT.

OAH Case No. 2015100163

ORDER DENYING STUDENT'S
MOTION FOR CONTINUANCE

On September 21, 2015, Student filed a request for due process, naming Rosemead School District. OAH issued an order scheduling mediation for October 28, 2015, prehearing conference for November 9, 2015, and hearing for November 17, 2015. On October 15, 2015, Student filed a motion to continue because his attorney has a hearing scheduled in another due process proceeding and because counsel will be on a long-planned vacation from November 30 to December 10, 2015. Student requests a hearing date after December 10, 2015. District filed a response, indicating that it does not oppose a continuance, but asks for a hearing date on or after January 25, 2016. The parties have not talked to each for purposes of agreeing upon continued dates.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Here, Student's counsel emailed an attorney at the firm representing District on October 13, 2015; this was not the attorney specified in District's notice of representation. Not having heard back, Student made the motion to continue. District's response states that the attorney whom Student's counsel emailed is out of state. Further, District's counsel states that they telephoned Student's counsel the day after they received Student's motion

and requested that Student's attorney contact them to discuss dates. Not hearing, District filed its response.

Student's attorney states that she is unavailable for the present hearing date because of another pending due process hearing. In asking for a continuance to after the attorney's vacation, Student fails to specify any continuance dates. Similarly, in not objecting to a continuance, District fails to provide any continuance dates, other than ask that the hearing be after January 25, 2016.

Both parties agree that this matter may be continued but have not directly communicated for the purpose of agreeing upon dates. The guidelines for first continuances, as set forth in the OAH website, indicate that requests for continuances should reflect attempts by the parties to agree upon continuance dates. Here, Student's counsel has not demonstrated good cause for a unilateral request for continuance, because the parties have not yet discussed mutually agreeable continuance dates.

If the parties agree upon continuance dates, they may file a joint request for continuance or request the administrative law judge, who appears at the October 28, 2015 mediation, to grant the continuance. If the parties are unable to agree upon dates for a continuance, then Student may again unilaterally seek a continuance.

Student's motion for continuance of due process hearing is denied. All dates remain as presently scheduled.

IT IS SO ORDERED.

DATE: October 20, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings